



Educational Foundation of
Abigail Bailey & Ann Levett
known as :

Chelveston School Trustees

Charity Registration Number 309769

To: The Trustees
Chelveston School Trustees
cc: Clerk to the Parish Council

25th February 2010

Dear Trustees

Report to the Trustees on actions taking following the illness of Michael Foulger

At the request of Christine Foulger and with the permission of Father Grant as Chairman of the Trustees, I have acted to deal with the growing volume of School Trustees and School House documentation and correspondence that has built up as a result of Michael's illness. I have undertaken this in a personal capacity and not formally in my role as Chairman of the Parish Council. I have undertaken a similar role for the Trustees of the Chelveston Village Hall Association and am formally Clerk to their Trustees pro-tem until permanent arrangements can be made.

School House and Village Hall Maintenance Matters

1. Communications from Martin Pendered (School House Agent) throughout 2009 indicated that the landlord's gas certification was out of date and that it was illegal to let a property without such certification.

Action taken: Given the difficult legal position here I immediately instructed Nick Bird (who has fitted various appliances over the years) to undertake an urgent inspection and to issue the necessary certification. This certification has been received and has been forwarded to Martin Pendered for their records. I await an invoice from Nick Bird for these services.

2. At the last Trustee meeting (for which there do not appear to be minutes), Michael was asked to get quotations for replacing guttering on the properties. There was a debate as to whether this would be plastic or cast iron. I have received two quotations from the builders approached but they appear to be quoting for different works.

- Gary Hewitt has quoted for replacement of the guttering to the **front** of the Village Hall and for a soak away to the right of the Village Hall to resolve the concerns about drainage directly into the foundations.

- In cast iron front V. Hall only	£1,585.00 + VAT = £1,862.75
- In plastic (simulating cast iron) front V. Hall only	£1,090.00 + VAT = £1,280.75
- Soak away at right side of V. Hall	£185.00 + VAT = £217.38

- Richard Kirk has quoted for the replacement of guttering to the rear, front and side of the Village Hall and for resolving the drainage issues. Richard does not believe that a soak away is the correct solution as a soak away should not be built within 5m of a property.

- In cast iron front, side and rear of V. Hall (not porch)	£2,987.00 (no VAT)
- Cast iron pipe guttering to hedge on right side of V.Hall	£122.00 (no VAT)
- In plastic (simulating cast iron) front, side, rear, & porch of V. Hall	£1,840.00 (no VAT)
- Plastic pipe guttering to hedge on right side of V.Hall	£122.00 (no VAT)

Action required: The Trustees need to be clear on the scope of works required and whether they should be done in cast iron (black) or plastic simulated cast iron (black). Both of the builders are known to us and will do a good job. Let me know which one to place the order with and what the scope of works should be. If necessary, I can ask Gary Hewitt to quote for the full job.

3. The October property inspection by Martin Pendered suggested that there were problems with leaking guttering leading to damp in the bathroom and that this was causing the tenants concern.

Action taken: I asked Gary Hewitt and Richard Kirk for quotations to check the guttering and eaves and to resolve the bathroom situation.

- Gary Hewitt has inspected the bathroom and believes that whilst there is a blocked gutter, the damp problems are caused by excessive condensation and lack of ventilation. There is no evidence of a leaking roof or leaking eaves.
 - To supply and fit an automatic humidistat fan £285.00 + VAT = £334.88
 - To clean out the **front guttering** £35.00 + VAT = £41.13
- Richard Kirk has not had chance to inspect the bathroom and has quoted as follows:
 - To clear **front and rear guttering** and inspect the bathroom and report £89.00 (no VAT)

Recommendation: The Trustees should review the quotations and determine which contractor should be given the business to resolve the issues. My recommendation for this job is to ask Gary Hewitt to install the fan and ask him to clear the guttering.

4. There have been a number of reports about odours coming from run off water leaving the septic tank at school house. The septic tank was reported as an issue in your 2008 meeting and Michael was asked to investigate solutions.

Action taken: No solutions have been identified but I have arranged for the septic tank to be emptied. This was paid for by the resident and the Village Hall (50:50). This will resolve the issue for 12-18 months but a longer term solution does need to be considered.

5. The lights at the front and rear of the Village Hall are unsatisfactory. The front one was damaged during the re-pointing of the stonework but realistically needed replacement anyway. Currently the Village Hall door needs to be left open at night for visitors to see their way to the door. At the rear there is a need for a PIR detector to switch the light on automatically when it is dark. This is essential as this is the entrance used by key holders.

Action taken: I have examined the lights and Michael's planned DIY solutions for them. I don't think these ideas are acceptable for a community premises. A qualified electrician needs to do the work in order for the installation to meet the requirements of the building regulations and the insurance.

Recommendation: A new light in keeping with the age of the building (and matching the guttering) should be sought and an electrician be engaged to fit both it and a suitable detector at the rear of the Village Hall. If the Trustees agree I will arrange quotations.

Charity Commission & Accounts Matters

6. The Charity Commission has become increasingly concerned over the apparent non-functioning of the Charity with regular letters having been received about the non-return of the Annual Updates since 2004. The 2004, 2005 and 2006 Annual Updates were all filed late on 20th November 2007 – well outside the 10 months allowed after each year end. The 2007 and 2008 returns had not been filed. I spoke with the Charity Commission contact centre and they indicated that a winding up and delisting process would begin shortly unless this situation was rectified immediately.

The missing annual returns for 2007 and 2008 meant that the Charity Commission view of the composition of the Trustee body was incorrect. Michael Foulger was still shown as a Trustee and Michael Smith was missing.

The Trustees are currently not meeting a number of the recent regulations and laws associated with the running of the Charity. You have failed to produce a public available Trustee Annual Report (TAR), contrary to *s11 Charities (Accounts and Reports) Regulations 2005*, nor provide information on how it is meeting the

public benefit test in line with s4 *Charities Act 2006*. These are very important regulations as they are designed to promote transparency in charity operations in return for the generous tax advantages on offer.

Action taken: Balance sheets and accounts had already been drawn up for the missing years 2007 and 2008 and had been approved by the Trustees. I therefore submitted these by recorded delivery to the Charity Commission and these were recorded as received on 5th February 2010 and now show on the public report from their web site. Even though the charity returns are now up to date, I cannot alter your public compliance history which is clearly poor.

I have corrected the details of the Trustees, removing Michael Foulger and adding Michael Smith. I have also changed the contact details for the charity to me (pro-tem) in order to simplify my interaction with the Charity Commission. This can be reversed by a simple transaction on the internet on your minuted instruction.

Recommendation: The Trustees must prepare an Annual Report this year for presentation to the Village and to the Charity Commission. This must include the annual accounts for 2009 and an indication of the achievements of the charity in 2009 and its plans for the future, particularly in the light of your large reserves. I suggest that this report be made to the Annual Parish Assembly in May 2010 and be published on the Parish Council web site to demonstrate your transparency to the Charity Commission. It must be submitted to the Charity Commission by the end of September at the latest.

7. The accounts submitted for 2007 and 2008 did not show the rent and insurance liabilities of the Chelveston Village Hall Association for their years ending 31st July 2007, and 31st July 2008. Investigation of the School Trustees' minute book shows that at the meeting of the 21st October 2008 Michael Foulger asked the School Trustees to consider waiving the outstanding rental and insurance payments on the grounds that the Village Hall Committee had insufficient funds following the refurbishment.

However, the receipts and payment accounts show that the Village Hall was not in fact short of funds. The year ending 31st July 2008 shows cash balances totaling £7,384.62, well in excess of its liabilities to the School Trustees of £1,663.72. It is true that the accounts also show that the Village Hall was running at an annual loss of £200-£600 – hence paying the ongoing rent/insurance was probably considered a problem in this context.

After Michael's request, Father Grant Brockhouse recommended that the School Trustees should **waive** rental and insurance payments **for the time being**, given the improved state of the interior of the Village Hall. Although this was minuted by the School Trustees in these terms, no formal resolution appears to have been passed and there is no evidence that the Village Hall Committee has been "officially" informed and that its liabilities have been waived.

Overall, notwithstanding this possible waiver, the Chelveston Village Hall Association owes the School Trustees £2,667.88 in rent and insurance back payments.

Action taken: I have shown this liability in the Village Hall Accounts for the year ending 31st July 2009 and shown these amounts as debts owing to the School Trustees for the year ending 31st December 2009. Neither Arthur Wright nor Michael Smith can recall the details of the 21st October 2008 meeting and are certainly not aware of any ongoing waiver agreement or subsequent discussions.

I have reported ambiguous position over these debts to the Chelveston Village Hall Association and indicated that we will formally ask the School Trustees to consider writing off the debts. However in making a decision the School Trustees should consider carefully their obligations to their own charitable objectives and take into account the recent heavy expenditure on restoring the exterior stonework of the Village Hall. Your failure to recover, or formally write-off, the monies owed is contrary to your 1906 & 1977 governing documents. [1906 trust deed para 9] and must be rectified as soon as possible.

In making your decision you should also consider the resources and obligations of the Chelveston Village Hall Association. It is clearly running at a loss (accounts attached) but does have the resources to pay these debts and did have them at the time the waiver was discussed – albeit not in immediately liquid form. It has been argued that no rent is due as the lease has expired. Although there is indeed no formal lease in place, the Clerk to the Parish Council believes that there is an "implied" lease operating in that you have charged and accepted rental payments since the formal lease expired. The original Trust Deed of the Chelveston Village Hall Association actually obliged them to maintain the lease (paying the agreed rent within 21 days of the due date) and to insure the building. Clearly this has not happened and in all respects the monies owing must be considered a debt until recovered or formally written off by the School Trustees.

Recommendation: Although I am formally asking you on behalf of the Chelveston Village Hall Association to consider writing off these debts, I do not believe that this is the right course of action. I recommend that you ask for them to be paid in full on the grounds that the Association has (and always had) the resources to pay and that their Trust Deed obliges them to pay.

8. The receipts and payments accounts were in excellent condition with very detailed records having been kept and a full reconciliation of the accounts to the bank statements was confirmed.

Action taken: It was therefore relatively easy to draw up the 2009 accounts. I have audited the books receipt and payments accounts very carefully and believe that the 2009 accounts attached represent a true record of the Charity's financial position. I have included valuations for the C.O.I.F. funds for the first time as these do represent assets that the Trustees should manage. They do form part of the endowment of the charity and their may be limited options for changing the investment, however their existence must be acknowledged.

Recommendation: That the Trustees formally approve the 2009 accounts as presented enabling me to complete the 2009 return well ahead of schedule.

9. The situation with the bank mandate is unclear and the bank are unable to tell me who the signatories to the account are (they can't read the historical signatures). However, it appears that there are only two current Trustees who can operate the account – Penny Hughes Smith and Noel Morris. This is risky as if one of these were to fall ill, then we would struggle to even change the mandate to add another as a minimum of two signatures are needed to change the mandate.

Action taken: I have discussed this with the bank and they have recommended that the Trustees complete a new mandate bringing the number of possible signatories up to four.

Recommendation: That all the Trustees direct me to arrange the completion of a new mandate and direct which names should be included.

10. The Village Hall lease of course is a major issue. Technically the Chelveston Village Hall Association only exists by virtue of the lease and scheme document dated 19th December 1977. The main purpose of that charity is to hold the leased property (the Village Hall) on Trust for the benefit of the Village. This lease expired on 19th December 2005 (after 28 years). It could automatically have been extended for 7 years provided that a formal application was made to the School Trustees by 19th June 2005. In 2002 the Charity Commission asked for confirmation that this would happen.

Actions taken: I have used the extensive and detailed minutes to research this issue. There were a number of attempts to vary the lease between 1994 and 2005. In particular a deed of variation was created in 1996 to extend the lease by another 28 years. This deed was discussed at each School Trustees meeting until August 2001 but didn't ultimately come to fruition. As the Trustees of the Chelveston Village Hall Association made no formal application for extension, the original lease lapsed. There may be legal arguments to be had about the existence of an "implied" lease or "tenancy at will" but I am not qualified to comment on these issues.

On 27th September 2007, the School Trustees debated the lease again and turned down the suggestion of a repeat 28 year lease and eventually "suggested" a 20 year lease. On 24th October 2007 this was debated again and extended to 21 years. The clerk of the Trustees was asked to instruct solicitors to draw up such a lease. There is no documentation to suggest that this has been done and no further discussion of this in the minutes of the School Trustees in 2008 and 2009. Michael Foulger cannot remember which solicitors he approached. There are no minutes for the Chelveston Village Hall Association covering this period to indicate what their view was and no evidence that they instructed solicitors.

In reality, the terms and covenants of the lease were broken in the years 1998, 2000, 2001, 2003 when the annual rent was not paid within 21 days of the due date primarily because of cash flow issues. All of the rent arrears were then made good 1-2 years later but no payments were made in year ending 31st July 2008 and none were made for the year ending 31st July 2009, a total of £600 or 2 years in arrears

Recommendation: The debates about leases have been going on since 1977 and clearly are getting nowhere. I do not recommend that these debates continue. It is clear that the existing Chelveston Village Hall Association is not functioning properly as a charity and that we need to consider the whole situation from a fresh perspective.

11. The history Village Hall - Distilled from the minutes of the School Trustees

On 23rd February 1976 the Trustees unanimously agreed to attempt to extend the charitable objectives of the Educational Foundation to include “the provision of the facilities of a village hall for the benefits of the inhabitants of Chelveston-cum-Caldecott” and asked the Charity Commission at the time to approve this.

At the time – the Charity Commission didn’t agree to this change but suggested that the School Trustees were free to **assist financially ... voluntary organisations in the village where their objects are, amongst other things the education of or improving the conditions of life for, the children or young persons by developing their physical, mental and moral capacities through their leisure time activities.**” From this statement was born the separate charity the Chelveston Village Hall Association in the following year – an expensive exercise involving the drawing up of two deeds.

In 1982 (just 5 years later) a joint meeting of the School Trustees and the Chelveston Village Hall Association discussed the amalgamation of the charities – although the School Trustees at that time decided at a subsequent meeting that contrary to the spirit their decision in 1976 they would **not** now seek amalgamation in view of the difficult discussions that had been recently held with members of the Village Hall Committee.

A further 1982 joint meeting between the charities again debated the sense of merging the charities but it was very clear that animosity was beginning to develop between the two charities with their respective representatives clearly being “old” village vs “new” village”. However, in the School Trustees meeting of 11th October 1982 all the Trustees bar one agreed to pursue the option of amalgamation with the Charity Commission.

Sadly some mistakes in the Charity Commission handling of the case got in the way and momentum was lost. In 1983, the School Trustees then reversed their original views about amalgamation because **“it would be better to stay as we are”**. The Charity Commission subsequently admitted mistakes in their handling of the case but offered three possible options to resolve the difficulties – none of which at the time involved amalgamation, but all of which involved the negotiation of market level rents or property purchase costs both of which would be borne by the Village Hall Association – an organization with few funds and little prospect of generating them. A whole series of valuations was undertaken looking at fair rents or purchase alternatives. No sensible agreement could be reached.

This absurd situation resulted in years of recrimination between the parties concerned – with the “stalemate” (mentioned as such in the minutes) continuing until 1985 with solicitors letters going backwards and forwards between the various parties (sadly all the parties were Village residents). Independent surveyors were engaged to set the rent for the Village Hall in 1986 at £300p.a. – a rate which is still in place in 2010 – some 24 years later.

In 1986, further attempts were made to resolve the situation between the charities using independent advice from the Northamptonshire Rural Community Council. They suggested that the School Trustees simply sell the building to the Village Hall Association to which the School Trustees unanimously replied that **the building belonged to the village** and they saw no reason to sell to another body nor pass responsibility for it over to a committee who were apparently acting for themselves and **not necessarily in the interests of the village**.

The impasse continued with no external input until 1990 when it was reported to the School Trustees that the **militant faction that was on the Village Hall Committee has now left**. This was considered to be the time to re-open discussions particularly as the Village Hall was costing much more to repair than it was paying in rent.

In 1991 a joint meeting was again organised with an adviser from Northamptonshire Rural Community Council to explore the way forward. It was at this meeting that the School Trustees and Village Hall Association were informed clearly that the nature of the lease between them was wrong and that this precluded the Village Hall Committee applying for grants. The adviser **believed** that the aims of the two charities were too far apart for amalgamation and that the sale or a change of lease were the only realistic options. The meeting agreed to try to change the lease – **15 years** after the original granting of it in 1977.

Joint meetings of the Village Hall Association, The School Trustees and now the Parish Council continued from 1991 to 1992 with a new option surfacing - to explore alternative sites **down in the village** for a new Village Hall. This option unfortunately gave the School Trustees the view that the Village Hall Association were not likely to be long term tenants and consequently discussions about varying the lease and extending

the term were not well received. However, the deed of variation was set in motion but with little actually happening until 1994.

The discussions about the deed of variation to the lease restarted and continued until November 1996 when the School Trustees agreed to it with some variations. The deed of variation was apparently nearly signed in 1997 but the wrong trustee names were now on it in view of the elapsed time. Changes were awaited.

In 1999 the Village Hall Association were still apparently changing the deed and the **final version was awaited**. Nothing happened.

The exasperated Parish Council asked both charities to present at the Annual Parish Assembly of 2002 and the will of the assembled village was **to ask the Village Hall Committee and the School Trustees to approach the Charity Commissioners with a view to combining the function of the two groups**.

A charity surgery was attended in late 2002 to consider this but as usual got nowhere, because it focused on the minutiae of the lease and not the fundamental question of "why two charities". In 2006 a report to the School Trustees by Michael Foulger rehearsed the usual historical arguments and reported that the lease had now expired anyway! Michael Foulger continued to remind the School Trustees during 2007 and 2008 that no lease was in place and a letter was received from the Chairman of the Village Hall Association in 2007 requesting a new lease. Nothing happened.

12. The Village Hall today

In all recent Parish Appraisals and at each Annual Parish Assembly, the Village Hall has been reaffirmed as an important asset and amenity for the Village which needs to be maintained and sustained. This will require active management and appropriate investment, something that the Chelveston Village Hall Association has clearly not delivered in recent years.

Although the Committee of the Chelveston Village Hall Association no longer meets, it is clear that the Village Hall still functions successfully as a venue with a number of regular hirers:

- The Chelveston Women's Institute – for monthly lectures and demonstrations
- The University of the 3rd Age – for classes and lectures
- The Nene Valley Astronomers – for lectures and observation sessions
- Group 74 – for monthly lectures and meetings
- Free spirits – for monthly classes and demonstrations.
- Pilates – weekly instruction and 10-week courses.
- War gaming societies – two groups quarterly all-weekend meetings

Each of these activities is clearly **educational** in nature fulfilling at least part of the original objectives of the charity:

- ...the property shall be held on trust for the purposes of a village hall for the use of inhabitants of the Parish of Chelveston-cum-Caldecott... without distinction of political, religious or other opinions including use for **meetings, lectures and classes** and for other forms of recreation and leisure time occupation with the object of improving the conditions of life for the said inhabitants.

13. The Village Hall & School Trustees future

It is now **34 years** since the School Trustees expressed the view that they should seek to extend their objectives to provide a Village Hall for the Village. It is now **24 years** since the School Trustees expressed the strong view that **the building belonged to the Village**.

In my view these early intentions and sentiments were entirely well founded and were ultimately in the best interests of residents in the Parish of Chelveston-cum-Caldecott. Sadly it appears that administrative inertia, poor advice from the Charity Commission, compounded by a clash of personalities stood in the way of progress.

It is very clear that the School Trustees' 1986 reservations about the Chelveston Village Hall Association were well founded. They were not an effective body to hold the lease of the Village Hall in trust for the Village. Even though most of the Trustees of that charity have now changed, there are still issues.

It is still not functioning properly as a charity and currently has no clear direction or plan. That charity is routinely running at a loss and has no sustainable recovery plan. As a committee they have not met since 2007, when they managed the renovation of the interior in time for the memorial opening. This was indeed an excellent piece of work and they should be commended for this, but it is not enough.

The Clerk of the Parish Council and I have studied the situation very carefully. We discussed it at the Parish Council meeting in February and subsequently with the Charity Commission. We believe that the Chelveston Village Hall Association should be **wound up** as a Charity and that its assets should be transferred by the Charity Commission to another body who would be responsible for discharging some or all of its objectives.

Although the Charity Commission previously advised that such major changes were not possible, their policy changed in 2008 to facilitate "charitable takeovers", particularly when one charity is struggling.

Clearly the School Trustees are a strong candidate for effecting such a takeover. This charity functions well on a day to day basis and ultimately owns the building in question. A takeover would indeed fulfill the vision formulated by the Trustees over 30 years ago – **to provide a Village Hall**. However, in my view the simple act of providing a Village Hall (even if supplemented by making educational grants) does not deliver against the original aims of the charity when it was set up in 1796. Surely the vision should be bolder. Why not consider the provision of the **Chelveston Village Hall and Educational Institute**.

This is not just a fanciful idea. Look again at the current hirers of the Village Hall – the majority deliver some form of education or instruction. All have chosen to use the Village Hall because of its size, cost and convenient location. A minor upgrade to the facilities (new kitchen and broadband network) would make the venue attractive to many other hirers and would allow the University for the 3rd Age in particular to expand the IT training classes it offers for retired people, many of which are used by residents in the Village. In school holidays it would also be possible to expand the educational and leisure activities for young people in the Village. With active management these activities should become income generating and will allow the School Trustees to continue to maintain the building effectively and generate an annual surplus for disbursement as bursaries to young people in the Village.

In my recent discussions with their advice centre, the Charity Commission have not said "no" and are interested in seeing formal proposals for a takeover. However, the School Trustees as a charity does not currently have a strong governance record with the Charity Commission and because the "charitable schemes" are so old they do not operate according to the Charity Commission good practice guidelines:

- The Charity does not have a membership body – only its Trustees
- The Trustees are not fully representative of the community it serves and are not subject to regular and transparent re-election.
- The Charity does not hold a public AGM or report publicly on its activities
- The Charity has not made any direct contribution to the public good since 1973 other than the granting of the lease to the Chelveston Village Hall Association.
- The Charity holds unrestricted reserve funds far in excess of what is needed for its annual operations and has no documented plan for their use.

The Charity Commission are keen to see improvements anyway and would certainly want to see this before transferring assets to the School Trustees.

Conclusions:

14. The School House and the Village Hall building are now in the best condition that they have been for a generation thanks to the stewardship of the School Trustees over the last 30 years.
15. An extra-ordinary amount of work has been required to resolve the administrative difficulties of both charities and to avoid the Charity Commission beginning formal winding-up procedures for them both. The immediate danger is now past but more work is still required to move them into a position of being sustainable ongoing concerns which operate according to the current Charity Commission regulations.
16. In fact, the Chelveston Village Hall Association is not functioning at all and needs to be wound up and its assets be taken over by a suitable body. The Chairman of the Chelveston Village Hall Association agrees with this analysis.

17. We have a once in a generation opportunity to create a re-vitalised Village Hall/Institute facility and restore the sense of community responsibility for this asset which the original Village Institute seemed to have.
18. With active management we are in a position to create an additional income stream for the School Trustees which will help generate funds annually – leaving the existing reserves as endowments for the ongoing maintenance of the building which is almost as important as the Church as one of the enduring symbols of our Village.

My offer to the Trustees:

15. In Michael's absence, the Trustees need a new Clerk pro-tem to handle the day to day functioning of the Charity and to chart the course required to meet the Charity Commission's guidelines for the running of a modern charity. I am willing to assist in this role for a period of 12-24 months until all of the necessary changes are implemented.
16. I am also willing to use my skills, experience and influence in the Village to help resolve the "Village Hall Question" once and for all to the satisfaction of everyone concerned. To achieve this, I will need to be co-opted as a Trustee of the Charity – again for a limited period until the work is complete.

I regret that I cannot meet with you in person on Friday but it will give you the opportunity for a frank exchange of views in private!

I welcome any questions or comments



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Enclosures:

Chelveston Village Hall Association Accounts Y/E 31st July 2009

School Trustees Draft Accounts for adoption Y/E 31st December 2009